

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: MARCH 16, 2005

Division: TDC

Bulk Item: Yes X No     

Department:                                 

Staff Contact Person: Maxine Pacini

**AGENDA ITEM WORDING:**

Approval of an Amendment to Agreement with Smith Travel Research, Inc. to amend scope of service to allow for an additional report, and increase compensation for additional report.

**ITEM BACKGROUND:**

TDC approved same at their meeting of January 18, 2005.

**PREVIOUS RELEVANT BOCC ACTION:**

**CONTRACT/AGREEMENT CHANGES:**

Amendment

**STAFF RECOMMENDATIONS:**

Approval

TOTAL COST: \$5,900

BUDGETED: Yes      No     

COST TO COUNTY: \$5,900

SOURCE OF FUNDS:                                 

REVENUE PRODUCING: Yes      No      AMOUNT PER MONTH      Year     

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:                                 

(Lynda Stuart)

DOCUMENTATION: Included X Not Required     

DISPOSITION:                                 

AGENDA ITEM #

# MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

## CONTRACT SUMMARY

Contract with: Smith Travel Research Contract #             
Inc. Effective Date: 3/16/05  
 Expiration Date:           

### Contract Purpose/Description:

Approval of an Amendment to Agreement with Smith Travel Research, Inc. to amend scope of service to allow for an additional report, and increase compensation for additional report.

Contract Manager: Maxine Pacini 3523 TDC # 3  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 3/16/05 Agenda Deadline 3/1/05

## CONTRACT COSTS

Total Dollar Value of Contract: \$ 5,900 Current Year Portion: \$             
 Budgeted? Yes ☒ No ☐ Account Codes 116-76065-53-34-T56G-250X-530340  
 Grant: \$             
 County Match: \$           

## ADDITIONAL COSTS

Estimated Ongoing Costs: \$           /yr For:             
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

## CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>1/8/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>1/31/05</u>
Risk Management	<u>2-7-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>2-7-05</u>
O.M.B./Purchasing	<u>02/03/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>2/4/05</u>
County Attorney	<u>1/31/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S.Hutton</u>	<u>1/31/05</u>

Comments:

## AMENDMENT TO AGREEMENT

THIS ADDENDUM to agreement is made and entered into this \_\_\_\_ day of \_\_\_\_ 2005, between the County of Monroe and Smith Travel Research, Inc.

WHEREAS, there was a contract entered into on December 14, 2004, between the parties, awarding \$5,700 per year to Smith Travel Research to develop local market reports which are designed to present data on the relative performance of lodging industry properties in selected competitive markets and segments of the lodging industry; and

WHEREAS, it has become necessary to revise the contract, and Exhibit A to allow for an enhancement of the weekly DaySTAR to include a separate District I report, and allow for additional compensation for cost of producing the enhanced report;

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. **Reports as outlined in Paragraph 2 be amended to read as follows:**

2. **REPORTS.** As consideration for the PAYMENT described below and Client's participation in the local market report program, Client shall receive a set of twelve (12) monthly reports and fifty two (52) weekly reports prepared by STR. The weekly reports should include a separate District I report. The first set of reports shall be issued to Client on or about January 5, 2004, and subsequent reports will be forwarded thereafter to Client on or about the first week of each month. The reports forwarded to Client shall include the type of market and market segment information contained in the sample reports attached as Exhibit "A" (Lodging Outlook Survey), which is fully incorporated to this Agreement by this reference.

2. **Payment as outlined in Paragraph 3 be amended to read as follows:**

3. **PAYMENT.** As consideration for participating in the Local Market Report program, BOCC agrees to pay STR for the first year of this agreement (January 1, 2005 through December 31, 2005) the total annual sum of six thousand, nine hundred dollars (\$6,900.00), with five hundred seventy five dollars (\$575.00) payable per month, within ten (10) days after the last day of the month for which payment is due, and thereafter the amount shall be adjusted for CPI. Client shall also provide STR with three (3) copies of each edition of Client's local market report, newsletter, publication (if any) in which the STR data (defined below) is printed as they are published, produced and/or disseminated. Payments for subsequent years of this agreement shall be agreed upon by both BOCC and STR.

3. The remaining provisions of the contract dated December 14, 2004, remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

Smith Travel Research, Inc.

\_\_\_\_\_  
President

(SEAL)

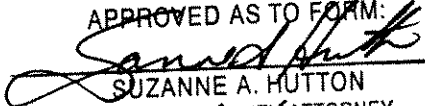
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY  
COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
SUZANNE A. HUTTON  
ASSISTANT COUNTY ATTORNEY

Date: 1/31/05

# EXHIBIT A



## Smith Travel Research Monroe County TDC Report Standard Daily TREND

Florida Keys Market

Sunday January 16, 2005 - Saturday January 22, 2005

e.d.trend  
Date: 01/26/2005

Day	This Year Date	Last Year Date**	Occupancy This Year % Chg	Room Rate This Year % Chg	RevPar This Year % Chg	Room Supply This Year % Chg	Room Demand This Year % Chg	Room Revenue This Year % Chg	Census Props	Census Rooms	Census & Sample % Room Sample						
Sun	1/16/2005	1/18/2004	84.5	0.7	166.63	10.7	140.77	11.5	9,587	3.6	8,099	4.3	1,349,516	15.5	186	9,587	39.2
Mon	1/17/2005	1/19/2004	78.4	7.1	154.30	8.9	121.03	16.7	9,587	3.6	7,520	11.1	1,160,319	21.0	186	9,587	39.2
Tue	1/18/2005	1/20/2004	82.0	7.3	157.30	16.2	128.96	24.7	9,587	3.6	7,860	11.2	1,236,342	29.2	186	9,587	37.3
Wed	1/19/2005	1/21/2004	85.4	6.9	154.95	6.4	132.39	13.7	9,587	3.6	8,191	10.8	1,268,206	17.8	186	9,587	39.2
Thu	1/20/2005	1/22/2004	89.8	1.4	162.13	7.1	145.54	8.5	9,587	3.6	8,606	5.0	1,395,249	12.5	186	9,587	39.2
Fri	1/21/2005	1/23/2004	92.2	4.5	169.95	9.9	156.64	14.8	9,587	3.6	8,636	8.2	1,501,673	19.0	186	9,587	39.2
Sat	1/22/2005	1/24/2004	92.5	0.3	174.01	10.4	161.04	10.9	9,587	3.6	8,872	4.0	1,543,847	14.9	186	9,587	39.2
Subtotal:			86.4	3.8	163.08	9.7	140.91	13.9	67,109	3.6	57,984	7.6	9,456,152	18.1			

Source: Smith Travel Research

\* Preliminary daily performance statistics are produced from STR's DayStar program, with participation of over 2 million U.S. hotel rooms.

\*\* Current year day is compared to comparable day prior year not the same date (Tue Jan 1, 2002 is compared to Tue Jan 2, 2001). This also applies to subtotals.

The information contained in this report is based upon independent surveys and research from sources considered reliable but no representation is made as to its completeness or accuracy. This information is in no way to be construed as a recommendation by Smith Travel Research or any industry standard and is intended solely for the internal purposes of your company and should not be published in any manner unless authorized by Smith Travel Research. A blank row indicates insufficient data. Copyright 2005 Smith Travel Research



**Smith Travel Research  
Monroe County TDC Report  
Standard Daily TREND**

Key West Tract

Sunday January 16, 2005 - Saturday January 22, 2005

Day	This Year Date	Last Year Date**	Occupancy This Year %	Chg	Room Rate This Year %	Chg	RevPar This Year %	Chg	Room Supply This Year %	Chg	Room Demand This Year %	Chg	Room Revenue This Year %	Chg	Census Props	Census Rooms	% Room Sample	Date: 01/28/2005	e.d.trend
Sun	1/16/2005	1/16/2004	87.3	-1.4	181.23	12.9	158.27	11.5	4,981	-1.0	4,350	-2.3	788,367	10.4	97	4,981	53.8		
Mon	1/17/2005	1/18/2004	79.3	0.4	166.67	10.0	132.10	10.4	4,981	-1.0	3,946	-0.7	658,013	9.3	97	4,981	53.8		
Tue	1/18/2005	1/20/2004	82.8	-2.7	169.85	14.6	140.60	11.5	4,981	-1.0	4,123	-3.7	700,312	10.4	97	4,981	53.8		
Wed	1/19/2005	1/21/2004	87.6	-2.3	168.73	10.9	147.79	8.3	4,981	-1.0	4,363	-3.3	736,151	7.2	97	4,981	50.2		
Thu	1/20/2005	1/22/2004	93.0	-3.3	177.80	7.1	165.27	3.5	4,981	-1.0	4,630	-4.3	823,198	2.5	97	4,981	53.8		
Fri	1/21/2005	1/23/2004	96.1	0.1	183.65	12.2	176.43	12.2	4,981	-1.0	4,785	-1.0	878,783	11.1	97	4,981	53.8		
Sat	1/22/2005	1/24/2004	96.4	-1.0	187.18	9.9	180.49	8.8	4,981	-1.0	4,803	-2.0	899,022	7.7	97	4,981	53.8		
Subtotal:			88.9	-1.6	176.89	11.0	157.28	9.3	34,867	-1.0	31,002	-2.9	5,483,846	8.2					

Source: Smith Travel Research

\* Preliminary daily performance statistics are produced from STR's DaySTAR program, with participation of over 2 million U.S. hotel rooms.

\*\* Current year day is compared to comparable day prior year not the same date (Tue Jan 1, 2002 is compared to Tue Jan 2, 2001). This also applies to subtotals.

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**THE FLORIDA KEYS & KEY WEST**  
**MONROE COUNTY TOURIST DEVELOPMENT COUNCIL**  
*Come as you are.*

**Memorandum**

**To:** Harold Wheeler  
**CC:**  
**From:** Jessica Mazzola  
**Date:** 1/6/05  
**Re:** Key West Smith Travel DaySTAR report

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Currently, we receive each week a report from Smith Travel Research, called the DaySTAR report, which provides data on average occupancy and average daily rates in Monroe County for the prior week. This report provides us more timely feedback as to lodging performance than the more comprehensive monthly STAR report. However, the DaySTAR report currently only gives performance data for the county as a whole, and unlike the monthly STAR report, does not break out DAC I separately.

Members of the Lodging Association requested we enhance the weekly DaySTAR to include a separate District I report. Such a report would provide extremely valuable data to assess the impact of events and holidays on lodging performance, as well as, as compare performance year over year.

The cost associated with this report enhancement is \$100 a month in addition to our current monthly cost of \$475.00.

There is not sufficient participation among properties in the remaining districts to produce a statistically significant DaySTAR report.

## LOCAL MARKET REPORT AGREEMENT

This AGREEMENT is made effective this the 15<sup>th</sup> day of DEC, 2004 by and between SMITH TRAVEL RESEARCH, INC., 735 East Main Street, Hendersonville, Tennessee 37075 (hereinafter referred to as "STR"), and MONROE COUNTY BOARD OF COUNTY COMMISSIONERS (BOCC), on behalf of the Monroe County Tourist Development Council, 1201 White Street, Suite 102, Key West, Florida 33040, (hereinafter referred to as "Client").

WHEREAS, STR is a leader in the lodging research industry and has developed a series of local market reports, which are designed to present data on the relative performance of lodging industry properties in selected competitive markets and segments of the lodging industry; and

WHEREAS, Client desires to become a participant in the local market report program; and

WHEREAS, Client desires to become a participant in the local market report program by entering into this Agreement; and

WHEREAS, this Agreement outlines the obligations and responsibilities of the respective parties participating in the local market report program; now therefore

In consideration of the following mutual covenants, STR and Client agree as follows:

1. **DURATION.** Client shall participate in the local market report program for a period of thirty-six (36) months, commencing January 1, 2005 (November data), and ending on December 31, 2008 (October data). BOCC has the option to extend this agreement for one (1) additional 24-month period, and can do so by providing 60 days prior written notice to STR.
2. **REPORTS.** As consideration for the PAYMENT described below and Client's participation in the local market report program, Client shall receive a set of twelve (12) monthly reports and ~~five (5) weekly reports prepared by STR~~. The first set of reports shall be issued to Client on or about January 5, 2004, and subsequent reports will be forwarded thereafter to Client on or about the first week of each month. The reports forwarded to Client shall include the type of market and market segment information contained in the sample reports attached as Exhibit "A" (Lodging Outlook Survey), which is fully incorporated to this Agreement by this reference.
3. **PAYMENT.** As consideration for participating in the Local Market Report program, BOCC agrees to pay STR for the first year of this agreement (January 1, 2005 through December 31, 2005) the total annual sum of five thousand, seven hundred dollars (\$5,700.00), with four hundred seventy five dollars (\$475.00) payable per month, within ten (10) days after the last day of the month for which payment is due, and thereafter the amount shall be adjusted for CPI. Client shall also provide STR with three (3) copies of each edition of Client's local market report, newsletter, publication (if any) in which the STR data (defined below) is printed as they are published, produced and/or disseminated. Payments for subsequent years of this agreement shall be agreed upon by both BOCC and STR.
4. **PUBLICATION FORMAT.** If the local market report data is published or re-printed by Client in a newsletter or other such periodic report that is primarily based on STR data, Client must inform STR of their intent to so incorporate such information or data and allow STR, at STR's election, to be cited as the source of such information or data. The citation of STR as the source of such data and information may include mention of STR in the masthead and/or title of the publication in such a way as to clearly indicate that the newsletter or report is a "joint publication of Client and Smith Travel Research, Inc.", "published in cooperation with Smith Travel Research, Inc." or any other suitable joint recognition requested by STR. In addition, the masthead or title



must be approved by STR prior to the initial publication of such newsletter, report, or publication. Any modifications to the masthead and/or title after STR has approved the format of the same, unless re-approved by STR, shall be considered a breach of this Agreement and allow STR to terminate this Agreement immediately in accordance with the other provisions set forth below.

If STR determines or otherwise agrees that the local market report data is merely a small part of the information regularly presented in Client's newsletter or periodic report (i.e., in addition to other topics of discussion such as member issues and industry news), after inquiry and disclosure by Client, STR may opt to instruct Client not to include the aforementioned joint recognition of STR and Client in the masthead and/or title.

ANY AND ALL REFERENCES TO OR INCLUSION OF STR'S LOCAL MARKET REPORT DATA IN ANY AND ALL TEXT, TABLES, GRAPHS, CHARTS, ETC., MUST BE CLEARLY ATTRIBUTED TO STR AS THE SOURCE OF THE DATA WHEREVER IT APPEARS AND IN WHATEVER FORM IT APPEARS. STR RESERVES THE RIGHT TO WITHHOLD MONTHLY LOCAL MARKET REPORT DATA IF CLIENT'S PUBLICATION OF THE STR DATA DOES NOT CONFORM TO THE PROVISIONS OF THIS AGREEMENT.

FURTHERMORE, IF STR DETERMINES THAT CLIENT HAS INTENTIONALLY OR REPEATEDLY FAILED TO CITE STR AS THE SOURCE OF THE DATA OR INFORMATION INCLUDED IN ANY CLIENT PUBLICATION, STR SHALL HAVE THE FURTHER RIGHT(S) TO DO SUCH THINGS AS: IMMEDIATELY TERMINATE THIS AGREEMENT, PROHIBIT CLIENT FROM FURTHER REPRODUCTION OR USE OF THE STR DATA OR INFORMATION, OR BRING A CAUSE OF ACTION AGAINST CLIENT FOR INFRINGEMENT OF STR'S COPYRIGHTS.

IF STR EXCUSES ANY FAILURE BY CLIENT TO CITE STR AS THE SOURCE OF THE DATA AND INFORMATION ATTRIBUTABLE TO STR, AND STR THEREFORE WAIVES A RIGHT OF ACTION AGAINST CLIENT, SUCH WAIVER OR ACQUIESCENCE SHALL NOT BE CONSTRUED AS A WAIVER OF EACH OR ANY SUBSEQUENT RIGHT OF ACTION, OCCURRENCE OR BREACH BY CLIENT.

5. **DEFAULT.** In the event that BOCC shall not make payment when due, STR shall be under no obligation to provide monthly reports to Client until such time as the overdue payment is paid. In the event that payment shall remain unpaid for a period of 60 days after its due date, this Agreement shall automatically terminate and otherwise become null and void, and STR shall have no further obligations; provided, however, that STR shall have the right to declare due and payable all sums due under the terms of this Agreement.

6. **DEFAULT COSTS.** In the event of BOCC's default under the terms of this Agreement, STR shall be entitled to receive from Client, in addition to all other amounts due, the costs of collection, including reasonable attorney's fees, incurred in the collection of amounts due under the terms of this Agreement.

7. **SUSPENSION.** If in the sole opinion of STR there is not sufficient continued participation by major lodging properties and/or chains to provide meaningful information to its Clients, STR shall have the option to discontinue the program and terminate this Agreement. Client may terminate this agreement with 30-day advance written notification. In the event of such discontinuance by STR or Client, STR shall refund any amounts previously paid by Client for a period for which reports have not been received.

8. **OWNERSHIP OF THE DATA.** All of STR's data, without regard to the form or content of the report in which it is incorporated, is, will be, and shall remain STR's exclusive property and proprietary information. Neither BOCC nor client shall license or sublicense, or in any way lay claim, in copyright or otherwise, to any of STR's data or information for any reason, nor shall BOCC or

Client enable any third party to do any of the same. The parties agree that any and all data sets, information, and reports, irrespective of form, prepared by STR and provided to Client are not and do not constitute works for hire under the copyright laws. STR has the right to authorize and assign publication rights of the local market report data under this Agreement to other subscribers of the local market report program. STR recognizes that upon provision of any reports to Client, those documents become public records and are subject to Florida Statutes (F.S.), Chapter 119. Section 119.07(1)(a), F.S. requires the TDC to permit such records to be inspected by any person desiring to do so, and to provide a copy of said record upon payment to Client of a duplication fee.

Client shall credit STR as the source of the data in each publication using local market report data with the following notation:

**SOURCE: COPYRIGHT 2005. SMITH TRAVEL RESEARCH,  
ALL RIGHTS RESERVED**

Such notation shall conspicuously appear immediately below or in conjunction with any and all graphs, charts, tables, etc. derived by Client from STR's data, and all such graphs, charts, tables, etc. shall become the property of STR, because of Client's derivation of STR's data. However, STR shall not be liable for, and shall be indemnified by Client from, any and all liability due to Client's improper or inaccurate derivation of the STR data. Documents and reports which have been produced on paper and have become public records in the Client's custody shall be retained by Client. The production under Section 119.07, F.S. is for informational purposes only and not for commercial release. The County has no policy allowing commercial use of the Client's public records other than those specifically developed for commercial use by the Client. Upon termination of this Agreement for any reason, or, with respect to any particular data, on such earlier date that such data will be no longer required by Client in order to perform under this Agreement, such data will be either erased from the data files maintained by Client or, if STR so elects, Client shall return the data to STR. Any such erasure of STR's data will be verified and confirmed in writing by Client. Documents and reports which have been produced on paper and have become public records in the Client's custody shall be retained by Client.

9. **CLIENT'S USE OF THE STR DATA.** Client is authorized to use STR data, results and/or the local market reports in the operation of its business. The initial Historical TREND data (if any) supplied by STR to Client is confidential and proprietary information, and the Client shall not disclose the Historical TREND data to any person or entity not authorized in writing to receive such information.

Client shall not make or report any projections regarding room rates, in its advertising or marketing efforts or in any of its publications, that are based on the information presented in the local market report. Client expressly agrees and understands that the data contained in any and all STR reports is of extraordinary value to STR. Furthermore, any and all forecasts and/or projections provided by Client and included with any data belonging to STR shall be clearly and conspicuously referenced as the projection or forecast of the Client and not STR so that all associated liability rests on Client and not STR.

To the extent Client desires to disclose any of STR's data or confidential or proprietary information, for any purpose, to anyone or any entity outside of Client's own internal business operations, Client agrees to protect the secrecy, confidentiality, and proprietary nature of STR's data and information by: (i) first informing STR in writing of the identity of the intended recipient of the disclosure, AND specifying the purpose of the disclosure, in order to provide STR with an opportunity to refuse authorization of such intended disclosure; (ii) requiring the intended recipient to sign a suitable confidentiality agreement between Client and the recipient protecting STR's data and information; and, (iii) delivering a copy of the signed confidentiality agreement to STR.

Prior to using local market report data in its publications, advertising or marketing efforts, Client shall provide STR with a copy of the proposed publication masthead, advertisement, or marketing plan to the extent STR believes necessary to protect the integrity of STR's product. STR has the right to amend or change the masthead, advertisement, marketing plan or other materials to the extent STR believes necessary to give proper attribution to STR, or to protect the integrity and secrecy of STR's data and information. If STR determines that its data, results, and/or the local market report(s) have been misstated, misquoted, used in any manner as to be misleading, or in any way reflect negatively upon STR's product, STR shall have the absolute right to revoke its authorization for client to use such data, results, and/or the local market report.

10. **DISCLAIMER.** Client acknowledges the local market reports are generated from information received through independent surveys and research from sources considered reliable in the hotel and motel industry. STR will use its best efforts to insure the information contained in the local market reports are accurate and complete. STR TAKES NO RESPONSIBILITY FOR THE ACCURACY AND VALIDITY OF THE RAW DATA PROVIDED TO STR FOR USE IN ITS LOCAL MARKET REPORT(S). CLIENT AGREES THAT STR SHALL NOT BE LIABLE FOR DAMAGES INCLUDING CONSEQUENTIAL DAMAGES, RESULTING FROM THE USE OF ITS DATA AND/OR THE LOCAL MARKET REPORT(S). STR MAKES, AND CLIENT RECEIVES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PERFORMANCE OF DATA OR THE RESULTS THAT MAY BE OBTAINED USING THE DATA. ACCORDINGLY, THE DATA IS LICENSED "AS IS" WITHOUT WARRANTY AS TO ITS PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE DATA IS ASSUMED BY CLIENT.

11. **LIMITATION OF STR LIABILITY.** The parties further agree that in no event shall STR's total liability relating to STR's performance under this agreement, or any report or data provided to Client by STR, exceed the sums payable by BOCC and received by STR, and in no event shall STR be liable for special, indirect, consequential, incidental, or exemplary damages.

12. **MODIFICATION.** This Agreement represents the entire understanding between the parties and there are no representations, agreements or understandings either oral or written, other than those set forth in this Agreement. Any modification to this Agreement shall be in writing signed by both parties.

13. **CHOICE OF LAW.** This Agreement shall be construed under the laws of the State of Florida. The parties further agree that the Court of Competent Jurisdiction be the United States District Court for the Southern District of Florida, or Courts of the 16th Circuit of the State of Florida.

The parties to this agreement sign below, intending to create a legally binding, agreement.

14. **INDEMNIFICATION.** Smith Travel Research covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of services provided by Smith Travel Research, occasioned by the negligence, errors, or other wrongful act or omission of Smith Travel Research or its employees, or agents.

15. **PUBLIC ENTITY CRIME STATEMENT.** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a STR, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for

CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

16. **ETHICS CLAUSE**. STR warrants that no person has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the Monroe County government or the TDC has any interest, financially or otherwise, in the FIRM or its subcontractor's.
17. **DOCUMENTATION PERTAINING TO AGREEMENT**. STR shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to STR pursuant to this Agreement were spent for purposes not authorized by this Agreement, the STR shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to STR.
18. **GOVERNING LAW, VENUE, INTERPRETATION, COSTS AND FEES**. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and STR agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. The County and STR agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.
19. **SEVERABILITY**. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and STR agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
20. **ATTORNEY'S FEES AND COSTS**. The County and STR agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
21. **BINDING EFFECT**. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and STR and their respective legal representatives, successors, and assigns.
22. **AUTHORITY**. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.


23. **ADJUDICATION OF DISPUTES AND DISAGREEMENTS.** County and STR agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.
24. **COOPERATION.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and STR agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and STR specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.
25. **NONDISCRIMINATION.** County and STR agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or STR agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.
26. **NON-WAIVER OF IMMUNITY.** Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the STR in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.
27. **PRIVILEGES AND IMMUNITIES.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the

performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

28. **LEGAL OBLIGATIONS AND RESPONSIBILITIES.** This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

29. **NON-RELIANCE BY NON-PARTIES.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the STR agree that neither the County nor the STR or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

30. **SECTION HEADINGS.** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

(SEAL)  
Attest: Danny L. Kolhage, Clerk  
  
Deputy Clerk

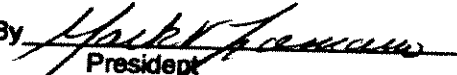
Board of County Commissioners  
of Monroe County

  
Mayor/Chairman

WITNESS:

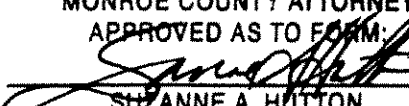
By \_\_\_\_\_

Smith Travel Research, Inc.

By   
President

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

  
SUZANNE A. HUTTON

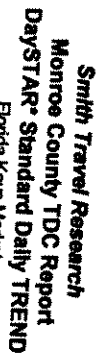
ASSISTANT COUNTY ATTORNEY

Date 11/23/04

Smith Travel Research  
Morris Co TDC CVR

September 2004 Compared With September 2003

		Overall Performance - September										Overall Performance - September - Year To Date										Participation					
Segment	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg	2004	2003	% Chg
Florida Keys	35.0	41.5	-14.2	117.7	107.12	9.8	41.26	50.62	-18.5	-18.5	-0.6	-28.6	74.7	75.1	-0.5	153.87	141.78	8.5	114.82	108.43	5.9	6.8	6.8	-0.0	185	53	8228
Upper Florida Keys	28.6	36.6	-21.9	98.51	96.62	2.8	28.13	38.18	-26.3	-25.2	-1.8	-27.2	67.6	68.4	-1.2	148.75	136.81	8.7	100.80	94.86	6.2	4.5	4.5	-0.0	87	18	4194
Key West	36.6	53.8	-31.8	128.71	114.22	12.6	51.36	61.84	-16.6	-16.6	-0.0	-26.6	60.5	78.8	-23.2	157.13	145.43	8.0	126.54	116.22	8.6	6.8	6.8	-0.0	90	35	1795
Luxury	33.3	53.2	-33.6	170.70	151.96	12.6	60.28	60.73	-0.7	-0.7	-0.0	-26.6	74.6	77.4	-3.4	228.52	211.40	8.6	171.06	163.65	4.6	4.7	4.7	-0.2	90	35	5032
Upstate	37.7	51.2	-26.4	128.85	114.22	12.8	48.67	68.46	-16.7	-16.7	-0.0	-34.1	78.3	78.6	-0.3	153.54	151.54	1.3	128.06	118.12	10.3	4.1	4.1	-0.0	28	16	2346
Midprice	32.7	43.8	-25.3	102.78	91.63	11.8	33.57	40.32	-16.7	-16.7	-0.0	-28.6	74.5	74.7	-0.2	132.08	120.83	9.2	98.37	90.32	8.9	11.1	11.1	-0.0	27	12	1526
Economy	32.6	43.7	-24.9	90.04	79.09	11.9	28.54	32.83	-15.0	-15.0	-0.0	-27.1	73.9	73.9	0.0	108.17	97.42	10.7	78.35	71.57	9.5	6.4	6.4	-0.0	15	15	980
Budget																											
Lower Tier	28.7	33.3	-13.6	66.76	73.25	-9.5	24.83	24.42	0.8	-2.5	-3.3	-18.6	68.6	68.6	-1.6	107.02	97.83	10.2	71.62	66.55	7.6	4.6	4.6	-0.0	36	7	1462
Middle Tier	40.7	45.4	-10.3	132.83	120.03	10.7	34.19	52.02	-34.3	-35.5	-1.6	-41.7	68.0	70.3	-3.3	185.86	181.12	2.6	133.32	127.33	4.7	3.4	3.4	-0.0	30	1	1030
Upper Tier	36.5	43.8	-18.7	82.90	75.07	10.3	33.04	41.62	-18.5	-18.5	-0.0	-34.1	81.6	78.4	3.2	104.80	87.07	17.7	85.57	78.74	8.6	7.1	7.1	-0.0	5	5	1219
Middle Tier	37.5	46.3	-19.0	106.73	95.10	12.2	40.01	44.06	-9.2	-9.2	-0.0	-19.5	78.8	78.4	0.4	127.44	119.03	7.0	100.49	90.94	10.5	9.8	9.8	-0.0	26	12	2180
Upper Tier	43.5	61.2	-28.8	168.22	148.71	12.4	73.28	81.58	-11.2	-11.2	-0.0	-28.6	81.7	84.2	-3.0	217.08	198.78	10.3	177.43	165.62	7.1	7.1	7.1	-0.0	33	13	1064
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**Smith Travel Research**  
**Monroe County TDC Report**  
**DaySTAR® Standard Daily TREND**  
Florida Keys, Miami

Sunday October 17, 2004 - Saturday October 23, 2004

Sunday October 17, 2004 - Saturday October 23, 2004																			
Day	Time	Est.	Est. Low	Est. High	Chg.	This Week	Chg. This Week	Chg. This Year	Chg. This Year	Chg. This Year	Chg. This Year	Chg. This Year	Chg. This Year						
Sun	10/17/04		10/18/03		57.6	-6.2	118.47	7.6	67.06	0.9	9.226	-0.6	5.912	-7.0	618.682	0.1	185	9.226	42.2
Mon	10/18/04		10/20/03		63.1	-0.2	111.78	5.7	70.57	5.6	9.226	-0.6	5.824	-0.8	651.041	4.8	185	9.226	42.2
Tue	10/19/04		10/21/03		60.0	-12.9	117.01	6.6	70.15	-7.2	9.226	-0.8	5.531	-13.6	641.186	-7.9	185	9.226	42.2
Wed	10/20/04		10/22/03		61.0	-20.1	121.26	3.8	73.87	-23.2	9.226	-0.6	5.628	-20.7	662.467	-23.8	185	9.226	42.2
Thu	10/21/04		10/23/03		67.0	-20.8	126.33	31.9	84.64	-46.1	9.226	-0.8	6.181	-21.4	780.875	-48.5	185	9.226	42.2
Fri	10/22/04		10/24/03		82.1	-14.7	137.43	-38.0	112.82	-47.6	9.226	-0.8	6.574	-16.3	1,040.606	-43.7	185	9.226	42.2
Sat	10/23/04		10/25/03		81.1	-8.4	140.72	-39.9	128.21	-43.3	9.226	-0.8	6.406	-9.2	1,192.890	-43.7	185	9.226	42.2
Subtotal:					66.8	-12.6	126.06	-23.3	88.77	-32.9	64.682	-0.6	44.456	-13.1	5,604.017	-33.4	185	9.226	42.3

Source: Smith Travel Research.

\* Preliminary daily performance statistics are produced from STTA's DaySTAR program, with participation of over 2 million U.S. hotel rooms.

[illegible]